



## The Attorney General of Texas

JIM MATTOX  
Attorney General

December 23, 1985

Supreme Court Building  
P. O. Box 12548  
Austin, TX. 78711-2548  
512/475-2501  
Telex 910/874-1367  
Telecopier 512/475-0266

714 Jackson, Suite 700  
Dallas, TX. 75202-4506  
214/742-8944

4824 Alberta Ave., Suite 160  
El Paso, TX. 79905-2793  
915/533-3484

1001 Texas, Suite 700  
Houston, TX. 77002-3111  
713/223-5886

806 Broadway, Suite 312  
Lubbock, TX. 79401-3479  
806/747-5238

4309 N. Tenth, Suite B  
McAllen, TX. 78501-1685  
512/682-4547

200 Main Plaza, Suite 400  
San Antonio, TX. 78205-2797  
512/225-4191

An Equal Opportunity/  
Affirmative Action Employer

Honorable Bob Bush  
Chairman  
Committee on Judiciary  
Texas House of Representatives  
P. O. Box 2910  
Austin, Texas 73769

Opinion No. JM-402

Re: Whether a district judge  
whose term expires in 1988 may  
be a candidate for probate  
judge in 1986

Dear Representative Bush:

You request our opinion on the following question:

Does any provision of the Texas Constitution or statutory law prohibit a district judge who will be in the middle of his four-year term at the time of the 1986 elections (i.e., will have more than one year left on his term at the time of the election) from running for a position as a probate judge in the 1986 general election?

Article XVI, section 65 of the Texas Constitution provides, in pertinent part, as follows:

Staggering Terms of Office -- The following officers elected at the General Election in November, 1954, and thereafter, shall serve for the full terms provided in this Constitution:

(a) District Clerks; (b) County Clerks; (c) County Judges; (d) Judges of County Courts at Law, County Criminal Courts, County Probate Courts and County Domestic Relations Courts; (e) County Treasurers; (f) Criminal District Attorneys; (g) County Surveyors; (h) Inspectors of Hides and Animals; (i) County Commissioners for Precincts Two and Four; (j) Justices of the Peace.

Notwithstanding other provisions of this Constitution, the following officers elected at the General Election in November, 1954, shall serve only for terms of two (2) years: (a) Sheriffs; (b) Assessors and Collectors of Taxes;

(c) District Attorneys; (d) County Attorneys; (e) Public Weighers; (f) County Commissioners for Precincts One and Three; (g) Constables. At subsequent elections, such officers shall be elected for the full terms provided in this Constitution.

In any district, county or precinct where any of the aforementioned offices is of such nature that two (2) or more persons hold such office, with the result that candidates file for 'Place No. 1,' 'Place No. 2,' etc., the officers elected at the General Election in November, 1954, shall serve for a term of two (2) years if the designation of their office is an uneven number, and for a term of four (4) years if the designation of their office is an even number. Thereafter, all such officers shall be elected for the terms provided in this Constitution.

Provided, however, if any of the officers named herein shall announce their candidacy, or shall in fact become a candidate, in any General, Special or Primary Election, for any office of profit or trust under the laws of this State or the United States other than the office then held, at any time when the unexpired term of the office then held shall exceed one (1) year, such announcement or such candidacy shall constitute an automatic resignation of the office then held, and the vacancy thereby created shall be filled pursuant to law in the same manner as other vacancies for such office are filled. (Emphasis added).

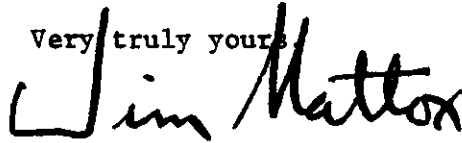
Because article XVI, section 65, does not mention district judges, the automatic resignation provision does not apply to district judges. The United States Supreme Court upheld article XVI, section 65, against a claim that the application of the resign-to-run provision to some public officials and not to others violated the equal protection clause of the Fourteenth Amendment. Clements v. Fashing, 457 U.S. 957 (1982).

We are aware of no similar provision that applies to district judges. But see Code of Judicial Conduct, Canon 7, V.T.C.S. Title 14-App. (concerning political activity by judges); see also Tex. Const. art. V, §1-a(6)(A) (willful violation of Code of Judicial Conduct is grounds for removal).

S U M M A R Y

The resign-to-run provision of article XVI, section 65, of the Texas Constitution does not apply to district judges.

Very truly yours

A handwritten signature in black ink that reads "Jim Mattox". The signature is written in a cursive, slightly slanted style.

J I M   M A T T O X  
Attorney General of Texas

JACK HIGHTOWER  
First Assistant Attorney General

MARY KELLER  
Executive Assistant Attorney General

ROBERT GRAY  
Special Assistant Attorney General

RICK GILPIN  
Chairman, Opinion Committee

Prepared by Sarah Woelk  
Assistant Attorney General